

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY REYES,

Defendant and Appellant.

C081310

(Super. Ct. No. SC061414A)

Defendant Anthony Reyes appeals from an order denying a petition to recall his so-called “three strikes” sentence of 25 years to life, brought pursuant to the provisions of the Three Strikes Reform Act of 2012 (the Act), codified at Penal Code section 1170.126.¹ (See *Teal v. Superior Court* (2014) 60 Cal.4th 595.)

Defendant’s petition was denied because his offense, robbery (§ 211), a serious and violent felony, was ineligible for resentencing, and the petition was untimely as it

¹ Undesignated statutory references are to the Penal Code.

was filed on December 10, 2015, more than two years after the effective date of the Act. (§§ 1170.126, subd. (b), 667.5 subd. (c)(9), 1192.7, subd. (c)(19).)

Counsel was appointed to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Counsel advised defendant of his right to file a supplemental brief within 30 days of the date of filing of the opening brief, and defendant filed a supplemental brief.

Whether the protections afforded by *Wende* and the United States Supreme Court decision in *Anders v. California* (1967) 386 U.S. 738 [18 L.Ed.2d 493] apply to an appeal from an order denying a petition brought pursuant to the Act remains an open question. Our Supreme Court has not spoken. The *Anders/Wende* procedures address appointed counsel's representation of an indigent criminal defendant in the first appeal as a matter of right and courts have been loath to expand their application to other proceedings or appeals. (See *Pennsylvania v. Finley* (1987) 481 U.S. 551 [95 L.Ed.2d 539]; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Martinez* (2016) 246 Cal.App.4th 1226; *People v. Kisling* (2015) 239 Cal.App.4th 288; *People v. Serrano* (2012) 211 Cal.App.4th 496; *People v. Dobson* (2008) 161 Cal.App.4th 1422; *People v. Taylor* (2008) 160 Cal.App.4th 304; *People v. Thurman* (2007) 157 Cal.App.4th 36; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570.) Nevertheless, in the absence of Supreme Court authority to the contrary, we will adhere to *Wende* in the present case where counsel has undertaken to comply with *Wende* requirements and defendant has filed a supplemental brief.

In his supplemental brief, defendant argues the trial court violated his right to due process by determining that his offense was ineligible for resentencing. We disagree.

Robbery is a serious and violent felony (§§ 667.5 subd. (c)(9), 1192.7, subd. (c)(19)) and defendant is ineligible for resentencing under the Act. (§ 1170.126,

subd. (e)(1).) In addition, a petition for resentencing must be filed within two years of the effect date of the Act, absent a showing of good cause for delay. (§ 1170.126, subd. (b).) The effective date of the Act was November 7, 2012. (*People v. Johnson* (2015) 61 Cal.4th 674, 679.) Defendant's petition was filed on December 10, 2015. His stated reason for the delay was that when he contacted the public defender's office about filing a petition, he was told he was ineligible for relief, but decisions from various courts have clarified the law governing the Act. Clarification may have occurred, but defendant's ineligibility for resentencing has not changed and he has not shown good cause for his delay in filing a petition for resentencing. The trial court was correct in denying resentencing and it did not violate defendant's right to due process.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment (order) is affirmed.

/S/
MAURO, Acting P. J.

We concur:

/S/
DUARTE, J.

/S/

 RENNER, J.